

S/N 10/017800

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mark Schwartz

Examiner: George Evanisko

Serial No.: 10/017,800

Group Art Unit: 3762

Filed: December 12, 2001

Docket: 279.353US1

Title: RATE SMOOTHING CONTROL

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
Mail Stop: Amendment  
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Alexandria, VA 22313-1450

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JUN 16 2004  
TECHNOLOGY CENTER R3700

In response to the Restriction Requirement dated May 18, 2004, Applicant elects, without traverse, to prosecute the invention of Group I, (Claims 1-36). Accordingly, Applicant hereby cancels claims 37-43 without prejudice or disclaimer. Applicant reserves the right to reintroduce such canceled claims in one or more divisional applications.

The Restriction Requirement also required an election between the following patentably distinct species: heart rate, cardiac rhythm, patient activity level, respiration, and metabolic need. Applicant elects the "heart rate" species for immediate prosecution, and submits that claims 1-6, 15 – 20, and 28 – 32 read on this elected species. Moreover, Applicant respectfully submits that at least claim 1 is clearly generic, since it recites each of the above-listed species.